IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 218 of 1999

in

SPECIAL CIVIL APPLICATIONNo 8478 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAGANLAL NATHALAL MISTRY

Versus

MILAN CINEMA

Appearance:

1. LETTERS PATENT APPEAL No. 218 of 1999

MR DS VASAVADA for the appellant.

MR KM PATEL for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE R.S.GARG

and

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 13/04/2005

ORAL JUDGEMENT (Per : HON'BLE MR.JUSTICE R.S.GARG)

The appellant claiming to be a workman filed an application under section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") making a claim of Rs.1,04,920.40 on the ground that he was entitled to such recovery from the establishment/ employer. The establishment/ respondent raised the issue including the issue of maintainability of the application under section 33-C(2) of the Act and also raised the question that there did not exist any relationship of employer and employee. After recording the evidence and hearing the parties the learned Labour Court, Ahmedabad in Recovery Application No.2104 of 1993 by its order dated 19.06.1998 ordered that the present appellant is entitled to recovery of the said amount. The said order passed by the learned Labour Court was challenged by the establishment in this Court in Special Civil Application No.8478 of 1998. The learned Single Judge allowed the writ application. Therefore, the workman/ original applicant is before this Court.

It was submitted in the very beginning that during pendency of this Letters Patent Appeal the appellant was dismissed from services. Therefore, he filed an application under section 10(1) of the Act which was ultimately allowed with a finding that he is a workman and was entitled to be reinstated. It is also admitted before us that the said award made by the Labour Court has been impugned in this Court in Special Civil Application No.225 of 2001 and the same is still pending consideration. It is also submitted that operation of the award has already been put in abeyance by this Court.

Placing reliance on the findings recorded in the subsequent proceedings learned counsel for the appellant submitted that if the appellant is workman and he had certain preexisting rights then the learned Single Judge could not interfere in the matter. On the other hand Mr.Patel, learned counsel for the establishment submitted that the findings recorded in the subsequent proceedings are still not res judicata between the parties because the same are under challenge before this Court.

Mr.Patel further submitted that if ultimately this Court interferes in the matter it is likely to make

their writ application infructuous or in the alternative if this Court refuses to interfere in the matter on the fact that there is no relationship of employer and employee, then the right of the employee would be adversely affected. The submission in fact is that this Court must refuse to interfere in the mater at this stage and require the appellant to have recourse to the other remedies available to him under the Act.

Indisputably the appellant before us has been directed to be reinstated on a finding that he is a workman. That finding is still subjudice before the High Court in a Special Civil Application. In a case where the relationship of employer and employee is challenged at the threshold and it is also submitted that the workman does not have any preexisting right, then the Labour Court would have no jurisdiction to pass any order under section 33-C(2) of the Act because those proceedings are in the nature of execution. In our opinion when the learned Single Judge has observed that in view of the disputes raised by the employer, the Labour Court should not have proceeded in the matter, then the order passed by the learned Single Judge cannot be held to be bad. The petitioner, however, would be entitled to recourse to any other remedy available to him under the Act. The Appeal is disposed of with the observations aforesaid.

(R.S. Garg, J.)

(Ravi R. Tripathi, J.)

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